IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.45 OF 1993

DATE OF DECISION: JULY 02, 2007

Lashkari Ram and another

.....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Ashok Aggarwal, Advocate,
for the petitioners.

Mr. M. C. Berry, Sr.DAG, Punjab.

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RANJIT SINGH, J. (ORAL)

Lashkeri Ram and Nand Lal were prosecuted for an offence under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

As per case of the prosecution, Nand Lal, petitioner, was owner of one Dhaba at Bus Stand, Kharar, and Lashkeri Ram was his employee. Manoj Kumar, Government Food Inspector, filed a complaint on behalf of the State under the provisions of the Prevention of Food Adulteration Act on 26.3.1991 with the allegation that he accompanied by Dr.Rajinder Singh had gone to the premises of the Dhaba. On inspection, they found 7 Kgs. of cow milk lying in a `***Patila'*** for sale of human consumption. After disclosing his identity, Manoj

Kumar purchased 750 Mls. Of cow milk for Rs.3.75P against proper receipt, after giving notice in form VI for the purpose of analysis. After following the proper procedure, the milk was sealed and sent to Public Analyst alongwith memo in Form VII, through messenger Mohinder Singh, a Class IV employee, in a sealed packet and the specimen impressions of the seal used to seal the sample. Two samples out of the same were deposited in the Local Health Authority, Ropar. The report of Public Analyst revealed that the milk was deficient in fat by 37.5% and milk solids not fat by 26% of the minimum prescribed standard. The milk accordingly was found adulterated. After completing various formalities, the trial of the petitioners followed, leading to their conviction and sentence and award of sentence of 9 months RI coupled with fine of Rs.1000/- each. They were further directed to undergo RI for two months in case of default of payment of fine.

The petitioners were convicted on 10.12.1991, which was impugned by them by filing an appeal on 24.12.1991. Their appeal was dismissed on 19.1.1993. Accordingly, the present revision was filed before this Court in January 1993. The revision accordingly is pending since then before this Court.

Mr.Ashok Aggarwal, counsel for the petitioners, submits that though he may have arguable points but would pray that leniency be shown in the award of sentence as both the petitioners have suffered enough while facing prolonged prosecution and the sentence staring at them for such a long period.

It is seen that incident is of 26.3.1989. The petitioners were convicted in December 1991 and thus faced prosecution for

over two years. Their appeal was dismissed in the year 1993 and since then the present revision is pending. Thus, the petitioners are facing the proceedings for the last 18 years. The sentence awarded to the petitioners is under suspension from 14 years or so. It would sound harsh at this stage to make the petitioner to undergo sentence. The petitioners appeared to have suffered enough by facing this prolonged prosecution and sentence staring at them. However, as pointed out by the State counsel, the provisions of Section 16(1)(a) of the Act, which prescribe minimum period of six months sentence may seem to be stand in the way of reduction of sentence or for the grant of benefit of probation to the petitioner.

To over come this hurdle, learned counsel for the petitioner has drawn my attention to ***Ganesh Maity Vs. U.T., Chandigarh,*** 2003 (1) R.C.R. (Criminal) 418, ***Krishan Kumar Vs. State (U.T. Chandigarh),*** 2005 (1) R.C.R. (Criminal) 975 and ***Surjit Singh Vs. State (Chandigarh U.T.),*** 2005 (3) R.C.R. (Criminal) 583 to say that though minimum sentence is prescribed under the Act, yet the same can be reduced, considering the long pendency of such proceedings.

Section 16 of the Act provides that the offence thereunder is punishable with imprisonment for a term, which shall not be less than six months. Section 20AA of the said Act further provide that the provisions of the Probation of Offenders Act and Section 360 of the Code of Criminal Procedure shall not apply to a person convicted for an offence under this Act, unless he is under 18 years of age. It can not be denied that the petitioner in this case has suffered a prolonged agony while facing criminal proceedings

spanning over a period of 18 years. He, thus, concededly has suffered considerable mental agony while facing prosecution and the sentence staring at him. Would not this reveal violation of his life and liberty guaranteed to him under Article 21 of the Constitution of India? No person shall be deprived of his life or personal liberty except according to the procedure established by law, says Article 21 of the Constitution. This, Article, earlier construed narrowly as guarantee against executive action unsupported by law has now been given new dimensions by the Courts to say that it would impose limitation upon law making as well. Thus to pass the test of being a valid law/validly legislated law, it has to be a reasonable, just and fair as well in addition to be being a validly legislated law. Assurance of a fair trial and a speedy conclusion of criminal trial is now recognized as part of the right guaranteed under Article 21 of the Constitution of India. Reference here can be made to ***Hussainara Khatoon and others Vs. Home Secretary, State of Bihar, Patna*** AIR 1979 SC 1360 and ***Kadra Pahadiya and others Vs. State of Bihar,*** AIR 1982 SC 1167. Seen in this context, delay in disposal of criminal prosecution, which in the present case is nearly 18 years, would certainly be a valid consideration for passing any order in regard to the sentence in the present case. Such a course was adopted in the case of Ganesh Maity (supra). In the case of Krishan Kumar (supra), the accused was directed to be released on probation, though he was of 19 years of age, considering the fact that he had faced trial for 19 years. Similarly, in the case of Surjit Singh (supra), the sentence awarded to the accused under Section 16 of the Act was reduced to a period already undergone on the ground that the

accused had faced trial for nearly 20 years.

In view of these peculiar facts, the sentence awarded to the petitioners is reduced to the period already undergone. The bail bonds, if any, furnished by the petitioners shall stand discharged. They would, however, deposit the fine, if not already paid.

Subject to the above observations, this revision shall stand dismissed.

July 02,2007 **(RANJIT SINGH)**
khurmi **JUDGE**